

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

FILED
U.S. DISTRICT COURT
BRUNSWICK, GA.

2012 AUG 27 AM 10:26

CLERK *C. Robinson*
SO. DIST. OF GA.

JOHN RANDALL FUTCH,

Petitioner,

vs.

CIVIL ACTION NO.: CV212-103

ANTHONY HAYNES, Warden,

Respondent.

ORDER

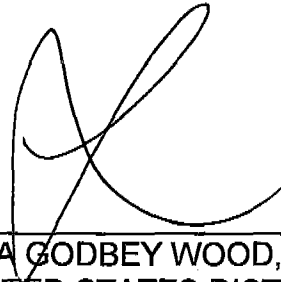
Petitioner John Randall Futch ("Futch") filed an Objection to the Magistrate Judge's Report dated July 27, 1012, which recommended that Respondent's Motion to Dismiss be granted and that Futch's petition for writ of habeas corpus brought under 28 U.S.C. § 2241 be dismissed. After an independent and de novo review of the record, the undersigned concurs with the Magistrate Judge's Report and Recommendation.

Futch's Objection reads as follows: he "objects to the entirety of the 'report' herein at length and incorporates his previous argument in his § 2241. [Futch] specifically objects to the factual statements throughout the Magistrates Report and Recommendation." (Doc. No. 17, p. 1). The undersigned agrees with the Magistrate Judge's characterization of Futch's claim (that he is actually innocent of the criminal charges to which he pled guilty) as an attack on the validity of his conviction. The Magistrate Judge correctly determined that Futch's claim falls within the ambit of 28

U.S.C. § 2255(a), does not meet the savings clause of § 2255(e), and must be brought in a motion pursuant to § 2255(a).

Plaintiff's Objection to the Magistrate Judge's Report and Recommendation is without merit and is **overruled**. The Report and Recommendation of the Magistrate Judge is adopted as the Opinion of the Court. Respondent's Motion to Dismiss is **GRANTED**, and Futch's petition is **DISMISSED**. The Clerk of Court is directed to enter the appropriate judgment of dismissal.

SO ORDERED, this 24 day of August, 2012.

A handwritten signature in black ink, appearing to be 'LW' or similar, written over a horizontal line.

LISA GODBEY WOOD, CHIEF JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA